

**Letter of Findings: 01-20170975
Individual Income Tax
For the Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Despite arguing that he was "not a Taxpayer" and thus his income was not subject to Indiana income tax, the Department rejected Indiana Individual's arguments as unsupported by law.

ISSUE

I. Individual Income Tax - Imposition.

Authority: Ind. Const. art. X, § 8; IC § 6-3-1-3.5 et seq.; IC § 6-3-1-9; IC § 6-3-1-12; IC § 6-3-1-15; IC § 6-8.1-5-1(c); *New York v. Graves*, 300 U.S. 308 (1937); *McKeown v. Ott*, No. H 84-169, 1985 WL 11176 (N.D. Ind. Oct. 30, 1985); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Richey v. Ind. Dept. of State Revenue*, 634 N.E.2d 1375 (Ind. Tax Ct. 1994); Black's Law Dictionary (7th ed. 1999).

Taxpayer argues he is not subject to Indiana's individual income tax because he is "not a Taxpayer."

STATEMENT OF FACTS

Taxpayer did not file an Indiana income tax return for tax year 2013. Based on the best information available to it, the Indiana Department of Revenue ("Department") issued a proposed assessment for tax owed in tax year 2013. Taxpayer protested the assessment. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Imposition.

DISCUSSION

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Taxpayer simply argues that he is not a Taxpayer and thus does not owe Indiana income tax. Taxpayer is mistaken. As set forth in the Indiana Constitution, "The general assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law." Ind. Const. art. X, § 8. It should be assumed that the drafters of the Indiana Constitution chose their words with care and, in the quoted section above, selected the word "levy" to describe the relationship between the state, the state's income tax, and the state's taxpayers. When the constitutional provision gave the general assembly the right to "levy" an income tax, it did so with the notion that the state had the right to "impose or assess by legal authority" that tax. Black's Law Dictionary 919 (7th ed. 1999). In IC § 6-3-1-3.5 et seq., the general assembly exercised its constitutional prerogative by imposing the adjusted gross income on both

individuals and corporations. In doing so it defined an "individual," subject to the adjusted gross income tax as "a natural born person, whether married or unmarried, adult or minor." IC § 6-3-1-9.

Taxpayer raises a threadbare argument which has been addressed in numerous jurisdictions and under numerous circumstances. In each case the argument has been definitively rebutted. "[A]rguments about who is a 'person' under the tax laws, the assertion that 'wages are not income', and maintaining that *payment of taxes is a purely voluntary function do not comport with common sense - let alone the law.*" *McKeown v. Ott*, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985) (*Emphasis added*). Such arguments "have been clearly and repeatedly rejected by this and every other court to review them." *Id.* at *1. As stated in *Richey v. Ind. Dept. of State Revenue*, 634 N.E.2d 1375 (Ind. Tax Ct. 1994), "The constitutional legitimacy of the general assembly's decision to tax income is beyond dispute."

The right of the individual states to impose a tax on the income of its residents was addressed by the Supreme Court in *New York v. Graves*, 300 U.S. 308, 312-13 (1937). In that decision Justice Stone stated "[t]hat the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicil itself affords the basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws *are inseparable from responsibility for sharing the costs of government. 'Taxes are what we pay for civilized society.'*" (*Emphasis added*).

Given that Taxpayer had taxable income, is an "individual" as defined under IC § 6-3-1-9, was a resident of Indiana for the years at issue (IC § 6-3-1-12), and is a "taxpayer" under Indiana law, (IC § 6-3-1-15), the statutes imposing the state's individual income tax are applicable to Taxpayer.

Taxpayer has not met his burden under IC § 6-8.1-5-1(c) of establishing that the Department's proposed assessments were wrong.

FINDING

Taxpayer's protest is denied.

Posted: 02/28/2018 by Legislative Services Agency
An [html](#) version of this document.